

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-1698

In Re: BETTY M. RUSMISELL; ANN RUSMISELL,

Petitioners.

On Petition for Writ of Mandamus. (CA-98-23-2)

Submitted: August 23, 2001

Decided: August 29, 2001

Before WILKINS and KING, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.

Betty M. Rusmisell, Ann Rusmissell, Petitioners Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Betty M. and Ann Rusmisell filed this mandamus petition requesting that this court compel the district court to comply with an earlier mandate of this court or, alternatively, "to prohibit the lower court from permitting and assisting the defendants below to re-litigate this issue of attorney fees ex parte and continuing to deny petitioners' discovery rights [sic]." Additionally, petitioners seek a stay of ongoing district court proceedings.

Mandamus is a drastic remedy to be used only in extraordinary circumstances. Kerr v. United States District Ct., 426 U.S. 394, 402 (1976). Mandamus relief is only available when there are no other means by which the relief sought could be granted, In re Beard, 811 F.2d 818, 826 (4th Cir. 1987), and may not be used as a substitute for appeal. In re Catawba Indian Tribe, 973 F.2d 1133, 1135(4th Cir. 1992). The party seeking mandamus relief carries the heavy burden of showing that he has "no other adequate means to attain the relief he desires" and that his entitlement to such relief is "clear and indisputable." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980).

Because the petitioners have failed to show that there is not an available remedy or that they are entitled to the requested relief, we deny the petition for mandamus relief and the request for stay. We dispense with oral argument because the facts and

legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED